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In the Supreme Court of the United States

October Term, 1964
No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee.

Appeal from the Supreme Court of the State of Iowa

APPELLANT'S REPLY BRIEF

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STATEMENT OF THE CASE

Appellant has no argument with the addition to the Statement of the Case contained in paragraph one of Appellee's Statement of the Case. However, for all of the reasons contained in Division II of this Reply Brief Appellant states that the addition contained in paragraph two of Appellee's Statement of the Case is incorrect and improper.

ARGUMENT

I.

Appellee contends that, notwithstanding the Treaty, Appellant must prove the existence of reciprocal rights of succession before he may acquire any property rights in Iowa.

Appellee's argument in Division I of her Brief is that the Treaty between the United States and Greece allows state law to restrict the acquisition of property by Greek nationals. Appellee argues Article IX, Section 1(a) of the Treaty states that the right of Greeks to acquire property rights in the United States is dependent on state law. Iowa law says that nonresident Greek aliens can take title to real estate in Iowa only by showing the existence of a reciprocal right of succession granted by Greece to United States nationals. Since Appellant didn't prove the existence of reciprocal rights of succession as required by the Iowa law he takes nothing, Appellee argues.

If Article IX of the Treaty contained only Sections 1(a) and 1(b), Appellee's interpretation and position would be irrefutable. Unfortunately for Appellee, however, the Treaty does not end there. Article IX, Section 2, provides as follows:

> "Nationals and companies of either party shall be permitted freely to dispose of property within the territories of the other party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition."

Appellant contends that this clearly means that the Treaty recognizes the right of states to restrict the right of Greeks to acquire property. However, in the event a state does so, Section 2 gives the alien the right to dispose of the property within five years. This is also the view of the Solicitor General of the United States. (See page 5 of the Memorandum for the United States dated December 1964 and filed in this cause by order of the Court dated October 12, 1964.)

Appellee contends, however, in Division I of her Brief that all Section 2 means is that the alien is given the right to *hold* property for five years regardless of state law to the contrary. Appellee says that Section 2 of the Treaty grants no right to *acquire* property where states restrict the right of aliens to acquire property, such as in Iowa. Appellee says that Section 2 refers only to property that has "already been acquired."

What Appellee ignores, however, is the plain language of Section 2 which allows the alien to dispose of property "with respect to the *acquisition* of which * * * alienage has prevented * * * (a national) from receiving national treatment * * *." (Emphasis ours.) It is Appellant's ward's *alienage* that requires him to prove the existence of reciprocal rights of succession under Section 567.8, Code of Iowa, 1962. By failing to prove reciprocal succession rights as required by the Iowa statute, his *alienage* has prevented him from having the same inheritance rights that a United States citizen would have in Iowa, i. e., from receiving national treatment. His *alienage* has prevented him from receiving national treatment in

acquiring property so he can dispose of it within five years as allowed by Section 2.

Appellee's statement that Section 2 refers only to property that has "already been acquired by inheritance," leaves unexplained how it was "already acquired." If the heir proved the existence of reciprocal rights of succession he would not need to dispose of the property as provided by Section 2. Under appellee's theory if he can't or doesn't prove the existence of reciprocal rights he acquires nothing for disposal. So, how the alien acquires the property that has "already been acquired" for disposal under Section 2 of the Treaty remains a mystery.

It is apparent that Appellee's interpretation of the provisions of Article I of the Treaty in general and Section 2 thereof, in particular, would make them absolutely meaningless. If even under the provisions of the Treaty a Greek must prove the existence of reciprocal rights to acquire any property rights, the Treaty gives him nothing. He could acquire the same rights under the Iowa law without the aid of the Treaty.

Appellee argues that in negotiating the Treaty the State Department took into consideration the reciprocal succession statutes and intended to make it clear that the limitations of these laws applied to the acquisition of real property by the Greek national. This undocumented statement is completely without foundation and completely contrary to the facts. In a memo to the Ambassador of Greece by Abram Chayes, the Legal Advisor for the Secretary of State, dated July 30, 1963 (See page 9, Memorandum for the United States dated December 1964, filed in this cause) it was stated:

> "The Treaty eliminates any necessity for proving reciprocity of treatment where the property in question is realty and thus subject to Article IX."

It is apparent that the State Department was cognizant of the reciprocal succession statutes, but instead of allowing them to operate in full force, it was decided to strike a compromise. Section 1(a) of the Treaty allows states to impose restrictions on the right of aliens to acquire property within their borders. Section 2, however, prevents an alien's rights from being completely forfeited by allowing him to acquire limited property rights and to sell the property and withdraw the proceeds. The allowance of the right to states to restrict alien's inheritance rights as set out in Section 1(a) of the Treaty are not meaningless, as argued by Appellee at page 6 of her Brief. Where reciprocal rights cannot be shown the states policies are recognized in that the alien can only hold the property for five years, and the alien is allowed the market value of his property.

At the bottom of page 5 of Appellee's Brief, Appellee makes the rather startling suggestion that Section 2 of the Treaty, giving a five year power of sale, is not applicable to this case because of Section 567.1, Code of Iowa, 1962, which is set out in full in Appendix A to Appellant's Brief. Appellee says the five year power of sale granted in Section 2 of the Treaty is not applicable because Section 567.1 gives a twenty year holding period and time within which sale can be made, without any burden of proving reciprocal rights. This is the first time Appellee has advanced this proposition, but if she is serious in her contention that Appellant falls within the

operation of Section 567.1, then there is no duty on Appellant to prove reciprocal rights at all and he has twenty years to sell the property or within which to become a resident of Iowa. Appellee erroneously claims the applicability of Section 567.1, however, since this section was adopted as law in Iowa in 1868 (R. 45). The Iowa Supreme Court held in its decision in this case that Section 567.8, which was adopted in 1954, controls the case and supersedes Section 567.1 (R. 49). Consequently, this attempt by Appellee to establish that Section 2 of the Treaty is inapplicable fails too.

It should be noted that no attempt was made by Appellee in her Brief to document by case authority or otherwise her position that the Treaty did not nullify the Iowa statute. Nor was any attempt made to distinguish or challenge the logic of the case of *Clark v. Allen*, 331 U. S. 503 (1947), which held that a treaty giving a three year power of sale to nonresident aliens invalidated a California statute almost identical to Iowa's. Nor was any attempt to discredit the two Iowa authorities, *Doehrel v. Hillmer*, 102 Iowa 169, 71 N. W. 204 (1897), and *Ahrens v. Ahrens*, 144 Iowa 486, 123 N. W. 164 (1909). These cases held that where a treaty gave a right of sale to an alien in the event his alienage prevented him from acquiring property by succession, the right to sell carried with it the necessary "ownership" to sell the property. Finally no attempt was made to refute, and indeed it cannot be, Appellant's contention that the State Department's interpretation that the Treaty eliminates the necessity of proving the existence of reciprocal succession rights, should be given great weight by the Court.

Appellee's argument that the Treaty does not invalidate the Iowa statute falls into the same errors as the Iowa Court and does not stand up under close analysis.

II.

Appellee erroneously argues that the Iowa Court found that the adoption should not be recognized by the State of Iowa for public policy reasons.

Appellee argues in Division II of her Brief that inheritance rights in the United States are determined under state law and that here Appellant must establish his inheritance rights under Iowa law. (See Appellee's Brief pages 8 and 9.) Appellee states also that, in determining the effect of an adoption under a law other than local law, it must be shown that the adoption was effective under the foreign law. Second, the law of the jurisdiction creating the status of adoption must not be so repugnant to Iowa law that the Iowa Court refuses to recognize the status as being contrary to Iowa public policy. Appellee goes on to state that the Iowa law set out in Section 600.6, Code of Iowa, provides that the inheritance rights between adopted child and adopting parents is the same as between parent and child born in lawful wedlock. Greek law provides that the adoptive parent does not have any inheritance rights over the adopted child.

To this extent Appellee correctly states the law and the holding of the Trial Court, the District Court of Iowa, in and for Woodbury County. Appellee then erroneously claims that the Iowa Supreme Court held that the adoption status of Appellant's ward was created under law so contrary to Iowa law that it should not be recognized.

The Trial Court found just the opposite in its Findings of Fact and Conclusions of Law (R. 32-38) and these findings were not disturbed by the Supreme Court of Iowa in its opinion (R. 42-55). The excerpt from the opinion of the Iowa Supreme Court set out on pages 9 and 10 of Appellee's Brief is taken completely out of context and certainly does not state that Iowa shall refuse to recognize the status of adoption for public policy reasons.

The Trial Court stated:

> "The ultimate issue in this case, then, is whether the minor, Constantine Neonakis, is entitled to share in the estate of the decedent, Nick Stergios, despite the provisions of the decedent's will.
>
> "Preliminary to the decision of that issue is the question of whether the judgment of adoption issued by the Greek Court is recognized as valid. If it is to be so recognized, the question of whether the plaintiff is entitled to share in the estate in view of the limitations imposed by Section 567.8 of the 1962 Code of Iowa must be decided." (R. 34).

The Trial Court then went on to find:

> "It is generally held that the status created by an adoption in a state having jurisdiction to create it, will be recognized by the courts of another state to the extent, at least, as is not inconsistent with the laws and policy of the latter." (R. 34).

After having examined the evidence on the first question as to whether the adoption should be recognized as valid, the Trial Court concluded:

> "• • • The judgment of the Greek Court adopting the child to Nick Stergios is conclusive upon this Court, no fraud having been shown in its procurement." (R. 36).

The Court having found for the Appellant that a valid adoption existed which would be recognized by the Iowa Court, then proceeded to discuss the second question, i. e., whether Appellant is entitled to share in the estate in view of the limitations of Section 567.8, Code of Iowa. The Trial Court concluded after reviewing the Treaty and the statute that Appellant must still prove the existence of reciprocal rights. At pages 37 and 38 of the Record the Trial Court states that Appellant did not carry the burden of proof imposed by Section 567.8 and could not indulge in the presumption that such reciprocal rights do exist. The Court went on to state:

> "Additionally, some affirmative evidence on the part of the plaintiff was introduced tending to show that such reciprocal rights may not in fact exist. (Exhibit No. "7", Interrogatory and Answer No. 36)." (R. 38).

Interrogatory and Answer No. 36 is set out in the Record at page 17, and is as follows:

> "36. Under Greek law does the adopting parent have any inheritance rights over the adopted child? A. No."

Thus it is apparent that the Trial Court was relying upon the differences between Section 600.6 of the Iowa Code and the Greek Adoption Code only as evidence of the lack of reciprocal inheritance rights as defined in Section 567.8. The difference in the two laws was not discussed by the Trial Court to show that the status of adoption should not be recognized for public policy reasons. The Court had already determined this question adversely to Appellee before it discussed the statutes relied upon by Appellee.

Appellee did not cross-appeal from the Trial Court's finding and ruling. It is apparent that the portion of the opinion of the Iowa Supreme Court quoted by Appellee on pages 9 and 10 of Appellee's Brief discusses the conflict between Section 600.6 of the Iowa Code and the Greek Adoption Code only on the issue of whether Appellant had proved the existence of reciprocal rights to succession as required by Section 567.8, Code of Iowa. Twice within the portion of the opinion referred to by Appellee, the Court states that there is no "reciprocity." Furthermore, the Iowa Supreme Court indicates that it is merely affirming the decision of the Trial Court. Not once does either the Trial Court or the Supreme Court of Iowa ever state that the status of adoption will not be recognized for public policy reasons. It is clear that the only basis found by the Trial Court and the Iowa Supreme Court for dismissing Appellant's claim was Appellant's failure to prove the existence of reciprocal succession rights.

It should be noted too that the argument advanced by Appellee in Division II of Appellee's Brief is not the question presented by the appeal as set out in Appellant's Notice of Appeal (R. 57), in the Jurisdictional Statement at page 5 thereof, nor in Appellant's Brief at page 3. Consequently, since Appellee did not designate another issue, Rule 15, Section 1(c)(1) and Rule 40, Section 1(d)(2) of the Revised Rules of the Supreme Court of the United States would appear to exclude Appellee's discussion of this issue.

Finally, on page 11 of her Brief, Appellee claims that an adopted child cannot inherit in Iowa if the adoptive parent cannot and that the Iowa Supreme Court's

opinion in this cause makes this the Iowa law. For all of the reasons set out in previous paragraphs of Division II of this Reply Brief, it is again submitted that this point was not even discussed by the Trial Court or the Iowa Supreme Court. Moreover, to reach such a result it would be necessary for the Iowa Supreme Court to have at least partially nullified Section 600.6 of the Code of Iowa. This section provides that the inheritance rights between adopted child and adoptive parents shall be the same as between natural born child and parent. It is submitted that if the Iowa Court intended to reach the result claimed by Appellee, it would certainly have been more explicit in doing so.

CONCLUSION

For the foregoing reasons, the Judgment of the Supreme Court of the State of Iowa affirming the Judgment and Decree of the District Court of Iowa, in and for Woodbury County, sustaining the validity of Section 567.1 and Section 567.8, Code of Iowa, 1958, should be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Respectfully submitted,

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